

### Subpart A—General

#### § 636.101 What does this part do?

This part describes the FHWA's policies and procedures for approving design-build projects financed under title 23, United States Code (U.S.C.). This part satisfies the requirement of section 1307(c) of the Transportation Equity Act for the 21st Century (TEA-21), enacted on June 9, 1998. The contracting procedures of this part apply to all design-build project funded under title 23, U.S.C.

#### § 636.102 Does this part apply to me?

(a) This part uses a plain language format to make the rule easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Unless otherwise noted, the pronoun "you" means the primary recipient of Federal-aid highway funds, the State Transportation Department (STD). Where the STD has an agreement with a local public agency (or other governmental agency) to administer a Federal-aid design-build project, the term "you" will also apply to that contracting agency.

#### § 636.103 What are the definitions of terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. Also, the following definitions are used:

*Adjusted low bid* means a form of best value selection in which qualitative aspects are scored on a 0 to 100 scale expressed as a decimal; price is then divided by qualitative score to yield an "adjusted bid" or "price per quality point." Award is made to offeror with the lowest adjusted bid.

*Best value selection* means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

*Clarifications* means a written or oral exchange of information which takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

*Communications* are exchanges, between the contracting agency and offerors, after receipt of proposals, which lead to the establishment of the competitive range.

*Competitive acquisition* means an acquisition process which is designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

*Competitive range* means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

*Contracting agency* means the public agency awarding and administering a design-build contract. The contracting agency may be the STD or another State or local public agency.

*Deficiency* means a material failure of a proposal to meet a contracting agency requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

*Design-bid-build* means the traditional project delivery method where design and construction are sequential steps in the project development process.

*Design-build contract* means an agreement that provides for design and construction of improvements by a contractor or private developer. The term encompasses design-build-maintain, design-build-operate, design-build-finance and other contracts that include services in addition to design and construction. Franchise and concession agreements are included in the term if they provide for the franchisee or concessionaire to develop the project which is the subject of the agreement.

*Design-builder* means the entity contractually responsible for delivering the project design and construction.

*Discussions* mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the offerors to revise their proposals.

*Final design* means any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed